

**IN THE MATTER OF PROGRESSIVE
BUILDINGS, LLC & GENESIS LIFE**

DOCKET NO. 2018-01

**VERSUS
INSURANCE**

DEPARTMENT OF

**LOUISIANA WORKERS' COMPENSATION
CORPORATION**

STATE OF LOUISIANA

LWCC'S POST-HEARING BRIEF

The post-trial brief submitted by claimants, Progressive Buildings, LLC ("Progressive") and Genesis Life ("Genesis"), attempts to divert attention from the considerable evidence submitted by Louisiana Workers' Compensation Corporation ("LWCC") by arguing issues that are not part of this appeal. Claimants spend a considerable portion of their brief arguing that the denial of coverage to two other Mallett-owned companies, Mallett Air Conditioning and Electrical and to Best Buy, which denial was based on the first sentence of La. R. S. 1409 that gives LWCC the right to deny coverage for previous non-payment of premiums, was improper. However, those companies are not parties to this appeal and the issue of whether LWCC's denial of coverage to them was proper (which it was) is not before the Commissioner in this matter.

The issue that is before the Commissioner is whether LWCC properly cancelled the Progressive and Genesis policies pursuant to the second sentence of La. R. S. 1409, which provides in pertinent part that:

...The failure or refusal by any applicant or insured to fully and accurately disclose to the corporation information concerning the applicant's ownership, change of ownership, operations, or payroll, including allocation of payroll among state and federal compensation programs, classification of payroll, and any other information determined by the board to be important in determining

proper rates shall be sufficient ground for the corporation to deny an application or to nonrenew or terminate an existing policy.... (emphasis added)

Section 1409 addresses virtually all of the issues raised by claimants in their post-trial brief. First, Section 1409 explicitly states that LWCC is entitled to full and accurate information about the *ownership* of the insured. As is the case in most regulated industries, ownership of a corporate entity is a relevant consideration because ownership can, and often does, control how a company operates. Section 1409 specifically recognizes that ownership is a fact that LWCC can take into account in making its underwriting decisions and this case is a perfect illustration of why ownership is relevant.

The owner of Progressive and Genesis is Chester Lee Mallett. He was also the owner of Mallett, Inc. in 2005 when Mallett, Inc. submitted an application for worker's compensation insurance to LWCC that did not fully and accurately disclose the information necessary for LWCC to properly rate and set the premium for that policy. As a result, LWCC quoted a premium of \$8,117 initially but discovered after an extensive audit that the correct premium was \$1,226,539.35. The difference was the result of the same sort of inaccuracies discovered during the Progressive and Genesis audits, underreporting of payroll and misclassification of expenses. In that case the audit revealed, among other things, grossly excessive per diem expenses and other items that should have been included in payroll for the purpose of setting premium.

In this case, LWCC's prior experience with a Mallett-owned company is a relevant consideration, permitted by 23:1409, and a perfectly legitimate reason for LWCC to protect itself by conducting a pre-audit to ensure that Mr. Mallett's new companies were not engaging in the same sort of conduct that caused LWCC to suffer grievous losses when it previously insured another Mallett-owned company. As it turned out, the claimants were doing exactly that.

In this case, the policies issued to Progressive and Genesis were not cancelled because Mr. Mallett owned those companies. They were cancelled because Progressive and Genesis failed to fully respond to the audit request and the applications and the information provided in response to the audits failed to fully and accurately disclose information regarding their operations, payroll, operations and classification of payroll and other information required by 23:1409 and necessary for LWCC to accurately rate and calculate accurate premiums for the policies.

Claimants argue, with no support in the law, that LWCC should not be allowed to do a pre-audit and should only conduct a final audit at the end of the policy period. However, LWCC's dealings with Mr. Mallett are a perfect illustration of why LWCC can and must do pre-audits in appropriate cases. LWCC was owed but never collected \$1,226,539.35 in premium by Mallett, Inc. Rather than pay the premiums owed, Mr. Mallett transferred ownership of Mallett, Inc. to his father, who then put the company in bankruptcy. Clearly, LWCC cannot be expected to write insurance on an inaccurate application and then wait until the policy expires and the insured has received the benefit of full coverage before LWCC conducts an audit to determine the correct premium and sends an invoice that may or may not ever be paid.

In fact, the statute that claimants argue makes LWCC an "insurer of last resort," La. R. S. 23:1391, expressly mandates that LWCC "...insure that rates charged are adequate to provide solvency and self funding of the corporation." LWCC attempted to do exactly that through the pre-audit that it conducted of Progressive and Genesis and discovered that it could not accurately determine appropriate rates and calculate premium based on the information provided in the applications and audit responses. As a result, it exercised the authority granted by 23:1409 to terminate the policies.

This statutory mandate, that LWCC insure that rates charged are adequate, is important not only to protect LWCC, but also to protect all workers compensation policyholders in Louisiana. LWCC occupies a special place in the workers compensation insurance market in Louisiana. It currently accounts for 25% of the workers compensation premium in Louisiana. Because of that, LWCC's data has a substantial impact on ratemaking for the workers compensation market as a whole in Louisiana. Inaccuracies in job classifications or payroll result in inaccurate premiums charged on current policies, which later skew rates for future policy holders in Louisiana when that experience is used by NCCI to calculate rates. It is important that LWCC get its rates and premium right. It cannot do that when a policyholder submits incomplete or inaccurate information and it must take appropriate action when that happens.

**Mallett Inc. (2005) – An inaccurate application, assessment of a fair premium,
and bankruptcy**

LWCC previously issued policy number 113480 to Mallet Inc. in 2005.¹ Chester Lee Mallett testified that he was the owner of Mallet Inc. at the time that the policy was issued. The amount of premium charged, based upon the information provided by Mallett Inc. in its application was a total of \$8,117.00.² Total payroll reported by Mallett Inc. was \$83,000 with less than \$12,000 of that figure identified as carpentry – installation of cabinet work or interior trim (class code no. 5437).³ The remainder of the payroll reported was clerical (8810) or hardware sales (8010) with a small amount listed as commercial driver (7380).⁴ There was no

¹ Progressive Exh. No. 2

² Id.

³ Id.

⁴ Id.

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payroll identified in the application that was listed in class codes that one would expect to be associated with the on-site construction of metal buildings which was the business of Mallett Inc.

A post-policy period audit of Mallett Inc. was conducted and a premium of \$1,226,539.35 was determined. The original payroll of \$83,000 was a small percentage of the actual payroll that should have been reported by Mallett Inc. on its application for policy number 113480 demonstrating a failure of Mallett Inc. to fully and accurately disclose its operations.

It was determined by LWCC's auditors that Mallett Inc. was paying wages that were misidentified by Mallett Inc. as per diems. This improper classification of payroll in the form of per diems was part of the reason that the original payroll reported on the application for insurance was so low. In addition, Mallett Inc. was classifying its employees as subcontractors and these individuals did not have their own policies of workers' compensation insurance. As a result, all of the wages, per diems and other payments made to these workers were not reported on the application, however LWCC had exposure for any injury suffered by these individuals.

Mallett Inc. never paid the adjusted premium. Mallett Inc. instead filed for bankruptcy protection.⁵ During the bankruptcy, Mallet Inc. did not dispute the amount owed to LWCC, which is listed on the bankruptcy petition as \$1,226,585.35.⁶ The Bankruptcy Court allowed the entire amount claimed by LWCC and, in the distribution of assets, awarded LWCC total payment of \$5,347.70.⁷ In the end, Mallett Inc. failed to pay over \$1.2 million dollars in premium that was owed under LWCC policy number 113480.

Progressive and Genesis Submit Applications

⁵ Progressive Exh. No. 3

⁶ Progressive Exh. No. 38

⁷ Progressive Exh. No. 3

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Bridgefield provided workers compensation insurance to Progressive and Genesis until May of 2018.⁸ The policy was cancelled midterm by Bridgefield, on 5/5/18 for “underwriting” reasons. On April 13, 2018, Steve Holder, acting in his capacity as agent for Genesis, submitted an application for worker’s compensation insurance through LWCC’s agency portal⁹. On that same date, LWCC Senior Underwriter, Donna Duhe-Jaufre, sent Steve Holder questions that required responses before a quote would be issued and the policy bound.¹⁰ No responses were ever received to the questions posed by Duhe-Jaufre. However, on May 2, 2018, a new application for Genesis was submitted by Holder.¹¹ Based upon the information provided in the new application, LWCC policy number 166244 was issued with an effective date of May 5, 2018.¹²

Also on May 2, 2018, Holder, acting in his capacity as agent for Progressive, submitted an application for workers’ compensation insurance through LWCC’s agency portal.¹³ The application was accepted and LWCC policy number 166245 was issued with an effective date of May 5, 2018.¹⁴

The application for Genesis listed Chester Mallett as President and 100% owner of Genesis; the application for Progressive listed Chester Mallett as President and 100% owner of Progressive. After the policies in question were bound, LWCC recognized the Chester Mallett listed on the applications as the same Chester Lee Mallett who was the owner of Mallett Inc. at the time that LWCC policy number 113480 was issued and which resulted in a default of \$1.2 million dollars in unpaid premium. LWCC also recognized that the original premium in LWCC

⁸ Progressive Exh. No. 4

⁹ Genesis Exh. No. 7

¹⁰ Genesis Exh. No. 8

¹¹ Genesis Exh. No. 9

¹² Genesis Exh. No. 2

¹³ Progressive Exh. 10

¹⁴ Progressive Exh. No. 5

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policy number 113480 was based upon information provided in the application for insurance and that the information provided on the application was not a full and accurate disclosure of the payroll, operations and classification of payroll of Mallett Inc.

In light of the previous outcome of the policy issued to a business owned by Chester Lee Mallett, LWCC sought to ensure that the information provided on the applications for Progressive and Genesis was a full and accurate disclosure of these businesses as required by law. The ensuing audit, that was begun on May 18, 2018, demonstrated that both Progressive and Genesis did not fully and accurately disclose their payroll, operations or classification of payroll and the ultimate premium that should be owed by these companies was indeterminate based upon the records provided and the manner in which these companies conduct their business.

In its brief, Progressive alleges that its understanding is that an audit should only be done at the end of the policy period in order to “true-up” the amount owed by the business. In the Mallett, Inc. matter, LWCC performed an audit at the end of the policy period to “true-up” the amount owed and discovered unreported payroll that generated audit premium in excess of \$1.2 million which was never paid. “Truing up” after the policy period ends is not an adequate audit remedy when a policyholder is not fully and accurately disclosing its operations. Considering LWCC’s prior experience with Mallett-owned companies, it would have been irresponsible for LWCC to accept the applications of Progressive and Genesis on their face. The pre-audit in this case was a reasonable and necessary precaution by LWCC, and entirely within its rights.

LWCC began the audits of Progressive and Genesis by letters dated May 18, 2018.¹⁵ On May 31, 2018, Buddy Parker, CPA for Progressive and Genesis provided some of the records

¹⁵ Progressive Exh. No. 6; Genesis Exh. No. 3
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requested however not all of the records requested by LWCC in the May 18th letter were provided by the deadline.¹⁶ LWCC sent follow-up letters via e-mail to Buddy Parker on June 1, 2018 advising which records had not been produced and that the policies would be pending cancellation due to the lack of production of requested audit documents.¹⁷ Based upon the failure of Progressive and Genesis to provide the documents requested for the audit, and based upon the information provided to LWCC which demonstrated that Progressive and Genesis failed to meet the requirements of La. R.S. 23:1409 to fully and accurately disclose its operations, on June 4, 2018 both Progressive and Genesis were mailed cancellation notices providing a cancellation date of August 6, 2018.¹⁸ Additional documents were eventually submitted to LWCC from both Genesis and Progressive and were reviewed, however these additional documents raised further examples of the failure of these businesses to fully and accurately disclose their operations, payroll and classification of payroll on their applications as required by La. R.S. 23:1409.

Problems Revealed by the Audit of Progressive

Payroll and job classifications included on the Progressive application

Progressive, doing business as Mallett Buildings, is in the business of constructing post-frame buildings for residential use. Based on LWCC's experience with similar businesses and information from Mallett Buildings' website, the normal distribution of payroll for a company in that business would include job classifications such as Roofing, Siding Install and other on-site construction classifications.

The Progressive application lists the following in response to the request to describe the company's business operations: "Builder of outdoor accessory metal buildings. Does installation

¹⁶ Progressive Exh. No. 7; Genesis Exh. No. 4

¹⁷ Progressive Exh. No. 7; Genesis Exh. No. 4

¹⁸ Progressive Exh. Nos. 8, 9; Genesis Exh. Nos. 5, 6

of trusses and framing of metal buildings. Uses lift boxes.”¹⁹ Progressive’s website states that they are the “oldest and largest post-frame building company in the South.”²⁰ The total payroll reported on the Progressive application is just over \$1 million dollars.²¹ Of that total, less than a third is related to class codes that could be used in on-site installation of trusses or the framing of metal buildings [carpentry-construction, plumbing, electrical wiring, concrete work, and excavation].²² There is no payroll assigned for class codes for sheet metal, roofing, and commercial carpentry which are codes that are expected to be found based upon the expressed nature of the business of Progressive.²³ More than forty percent of the payroll reported is for sales, clerical and drivers.²⁴ The final third of the payroll reported is assigned to shop work to produce the trusses and metal buildings.²⁵ The least expensive class codes (sales/clerical) have the bulk of the payroll as reported on the insurance application. The premiums for these class codes for sales and clerical are not only less expensive but they have nothing to do with physical labor required for the installation of trusses or framing/construction of metal buildings.

Through information obtained in the audit, LWCC identified several examples where Progressive’s payroll records classified employees as Group Home but whose job duties identified them as Laborer; one of these employees, [REDACTED] was actually injured when he fell from a ladder while installing sheet metal on a Progressive job²⁶. However, there was no payroll reported under the higher-rated sheet metal installation class code. The payroll records of another employee, Brent Ferguson, classify him to the lower-rated Sales class code although

¹⁹ Progressive Exh. No. 10

²⁰ Progressive Exh. No. 14

²¹ Progressive Exh. No. 10

²² Id

²³ Id

²⁴ Id

²⁵ Id

²⁶ Progressive Exh. No. 34

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Progressive's website identify him as both the Gutter Supervisor and Truss Plant manager which would put him in either the Construction or Carpentry class code.²⁷

On its face, the application fails to provide sufficient on-site construction payroll that would be associated with a company that has job related income of \$3.3 million dollars for 574 jobs as shown in the 2017 financial records.²⁸ This nominal amount of labor, and subcontract labor, which will be explained later in the brief, would equate to the grand sum of less than \$100 for the installation of trusses and construction/framing structure on each job. The application submitted by Progressive showed none of these higher rated on-site job classifications, and the total "Construction Install" payroll was only a fraction of what would be expected for a company in the business of constructing buildings.

The bulk of the payroll listed on the application was in lower-rated classifications. The highest rated classification listed on the application had the lowest total payroll (\$296,000).²⁹ The next highest rated classification had greater payroll (\$314,000).³⁰ More troubling, however, was the fact that the lowest rated classification, clerical and sales, had the highest payroll by far (\$439,000).³¹ This payroll distribution is the opposite of what would be expected for that type of business and the disparity had the effect of lowering the worker's compensation premium calculated based on the application.

The payroll picture became more concerning when LWCC reviewed Progressive's 2017 financial records. For that year, Progressive showed none of the higher rated construction classifications and showed total "Construction Install" payroll of only \$119,513.³² The majority

²⁷ Progressive Exh. No. 35

²⁸ Progressive Exh. No. 15

²⁹ Progressive Exh. No. 10

³⁰ Id

³¹ Id

³² Progressive Exhs. 10.

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of Progressive's payroll was placed in the lowest rated classification of Clerical and Sales (\$276,290) and, surprisingly, in "Group Home" (\$245,870).³³ Progressive does not operate a Group Home. Genesis classifies employees to the Group Home class code and its 2017 financial records show that Genesis paid employees classified under Group Home wages of \$426,327.33.³⁴ Mr. Mallett offered no good explanation of why Progressive was paying salaries of employees in the Group Home class code in 2017, nor why the total Group Home classification payroll for the two companies was over \$645,000 while the payroll for Mr. Mallett's principal business activity, construction of buildings, was only \$119,513.

Whatever the reason, that distribution of payroll for Progressive resulted in much lower workers compensation premium for Progressive than would be expected for a construction company of that size. And the evidence of misclassification of individual employees makes it impossible for LWCC to rely on the applications and payroll records of Progressive for premium calculation purposes.

Lack of Building Materials

The audit of Progressive's 2017 financial records revealed that Progressive received revenue of approximately \$3.3 million from 574 jobs. However, Progressive's records show only \$3,077 in building materials purchased, far less than would be expected for that number of jobs.

Use of Subcontractors

Because Progressive's financial records showed construction site payroll and material purchases considerably lower than would be expected for the number of jobs performed and the amount of job-related revenue generated, LWCC investigated whether Progressive performed its

³³ Id

³⁴ Progressive Exh. 11
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work through subcontractors and whether that might explain the discrepancies in the financial records. Progressive's application stated that 25% of its work was performed by subcontractors. Progressive's Operations Manager told LWCC's Safety Inspector that all of Progressive's onsite installation work was performed by subcontractors.

Progressive provided its 1099 summary for 2017 which listed seven contractors who were paid nonemployee compensation for the entire year.³⁵ The listed contractors are: (1) [REDACTED]

[REDACTED] (2) [REDACTED] (3) [REDACTED] (4) [REDACTED] (5) [REDACTED] (6)

[REDACTED] and (7) [REDACTED].³⁶ In support of the reported \$3.3 million dollars in job income in 2017, the total payments made by Progressive to these "construction contractors" was \$55,346.79 which represents the total on-site construction costs to install trusses and install metal buildings.³⁷ The amount of payments made to these contractors for on-site constructions costs represents less than two percent of the total job income of Progressive during 2017. LWCC's experience with the construction industry indicates that the figure for on-site construction should be substantially more than the reported two percent.

These facts raised two possibilities that were of concern to LWCC. One is that Progressive was doing onsite construction work with its own employees but not properly classifying their payroll as such. The second is that Progressive was using undisclosed subcontractors, which would prevent LWCC from ensuring that those subcontractors were insured, and if they were not, charging premium for the subcontractor labor. A third possibility arose when LWCC's review of the Progressive's general ledger revealed substantial transfers of job-related revenue to two of Mr. Mallet's other companies, Nature's Best and Caddy Shack.

³⁵ Progressive Exh. 15

³⁶ Id

³⁷ Id

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Neither of these companies has workers compensation insurance, raising the specter of substantial use of related, uninsured subcontractors.

Problems with Subcontractors insured by LWCC

Progressive provided LWCC with certificates of insurance for seven subcontractors in 2018. Five of those subcontractors were insured by LWCC. As part of the audit, LWCC attempted to contact the subcontractors that it purportedly insured to determine the nature of work that they did for Progressive and to try to resolve the discrepancies discussed above. However, this investigation revealed additional problems.

The first problem was that the policies were all issued pursuant to applications submitted by Mr. Mallett's insurance agent [REDACTED]. The applications were virtually identical, with four showing identical payroll of \$30,000, and all classified as "Residential Carpentry - Construction."³⁸

Additional problems quickly arose when LWCC contacted the "insureds." LWCC was able to reach [REDACTED] and was advised that she never applied for nor purchased a workers' compensation insurance policy from LWCC and did not know who was [REDACTED] the agent for the purported policy of workers' compensation insurance. Mr. Mallett attempted to explain this away by saying that he began making it a practice to purchase workers' compensation insurance policies for his subcontractors and then collect the premiums from the subcontractors. He brought documents with him to the second day of trial showing these workers' compensation payments. However, when shown that the records revealed no such payment to [REDACTED] he tried to explain that away by saying that she must have been a subcontractor for another of his companies.

³⁸ Progressive Exh. Nos. 27, 29, 30 and 31
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The other subcontractor LWCC "policyholder" contacted by LWCC was [REDACTED]. Mr. [REDACTED] is a disabled veteran living in a mobile home park. When contacted, he advised that a neighbor had a construction crew and was having difficulty cashing checks and asked that the checks be issued in his name to which he agreed. Early this year, [REDACTED] received a 1099 from Nature's Best, an uninsured company owned by Mr. Mallett, for \$207,000 of income. [REDACTED] denied applying for or purchasing a workers' compensation policy. Again, Mr. [REDACTED] was not listed in the documents provided by Mr. Mallett on the second day of trial showing collection of premium amounts from subcontractors of Progressive. Instead, Mr. Mallett explained this discrepancy in two ways.

He first testified that the 1099 was for "freight" or building materials. He said that he had reviewed his records and all invoices for [REDACTED] were for "freight." Mr. Mallett failed to provide any of those records. He also said that Mr. [REDACTED] despite being a disabled veteran, was actually delivering the building materials to the job sites. However, there would be labor associated with the delivery and no such records were provided.

Secondly, Mr. Mallett described a meeting he had with his shop foreman, [REDACTED] where he described an agreement between [REDACTED] and another individual who asked him to have his name on checks because of the inability to cash checks which was consistent with what [REDACTED] told the LWCC auditor. Mr. Mallett explained that it would be [REDACTED]'s responsibility to make the proper withholdings. Nature's Best relationship to Progressive will be described later in the brief but the undeniable conclusion is that [REDACTED] was not a subcontractor of Progressive as reported by it; another individual was an uninsured subcontractor for metal building work ultimately the responsibility of Progressive; that a 1099 was prepared for the labor associated with the work done by the construction crew of that individual for \$207,000;

and that this uninsured labor was not reported to LWCC in the application nor the records provided by Progressive.

During the pre-writing safety visit on April 20, 2018, [REDACTED] reported that all installation work of the trusses and the metal buildings, including door and windows, was performed by subcontractors.³⁹ However at a later date, [REDACTED] told an LWCC claims investigator that some of the Progressive employees worked on the road where they installed metal buildings.⁴⁰ During the time that the LWCC policy issued to Progressive was in effect, an employee of Progressive suffered an accident arising out of and in the course of his employment and in the course of the investigation of the claim, [REDACTED] provided the information regarding job duties and locations worked of some Progressive employees.⁴¹

The information provided by Progressive in its application for insurance with LWCC, the information contained in the financial records provided by Progressive for the audit by LWCC, and the information provided by Progressive during the investigation of a compensable claim by LWCC are all different. The lack of clarity on the use of subcontractors, the amount paid to subcontractors, the coverage of subcontractors under their own policies, and the job duties of subcontractors as opposed to employees of Progressive all demonstrate that Progressive did not fully and accurately disclose their operations or their payroll on the application for insurance submitted to LWCC on May 2, 2018. This failure to fully and accurately disclose provides LWCC a sufficient basis for the cancellation of the policy to Progressive effective August 6, 2018 pursuant to 23:1409.

Payments to Nature's Best and Caddy Shack

³⁹ Progressive Exh. No. 17

⁴⁰ Progressive Exh. No. 18

⁴¹ Id

Progressive's general ledger shows hundreds of instances where job-related income from customers was received by Progressive and then immediately paid out to Nature's Best, another Mallett-owned company.⁴² In some instances, a portion of that job-related income was paid back to Progressive at a later date by Nature's Best. The amounts paid back to Progressive varied considerably from job to job, and are described in the general ledger simply as "Building Fee." In total, Progressive paid Nature's Best approximately \$2,500,000 in 2017 and paid Caddy Shack, another Mallett-owned company, approximately \$600,000 in 2017.⁴³ That represents \$3,100,000 in payments to those two companies out of total revenue of \$3,300,000 for Progressive in 2017. Neither of the companies was identified as a subcontractor by Progressive and neither of the companies carries worker's compensation insurance.

Excessive Mileage Reimbursements

The records provided by Progressive reveal that there were substantial payments to employees that were excluded from payroll and therefore these additional payments were excluded from the computation of workers' compensation premium. In 2017, Progressive paid 46 employees a total of \$553,000 in mileage reimbursements.⁴⁴ During that same time period, Progressive paid those same employees only \$452,000 in payroll. Legitimate mileage reimbursements are withheld from the calculation of workers' compensation premium as these mileage reimbursements are not taxable income to the employee and therefore are not considered wages for workers' compensation benefits calculations.⁴⁵ The records provided by Progressive demonstrate that the mileage payments made to its employees are excessive and amount to unreported wages in the calculation of Progressive's workers' compensation premium.

⁴² Progressive Exh. No. 37

⁴³ Id

⁴⁴ Progressive Exh. No. 20

⁴⁵ La. R.S. 23:1021(13).

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██████████ is listed under the Excavation code by Progressive and his reported wages for all of 2017 total \$16,863.⁴⁶ However, Progressive paid ██████████ an additional \$54,089 in mileage reimbursements in 2017 which amounts to 76% of the total amount paid to ██████████ in 2017 not being subject to workers' compensation premium calculations.⁴⁷

██████████ is listed under the Clerical code by Progressive and her reported wages for all of 2017 total \$17,750.⁴⁸ However, Progressive paid ██████████ an additional \$94,450 in mileage reimbursements in 2017 which amounts to 84% of the amount paid to ██████████ in 2017 not being subject to workers' compensation premium calculations.⁴⁹ ██████████'s mileage reimbursement is an excellent example of how Progressive's mileage reimbursement to its employees is, to put it generously, implausible. In order to legitimately collect \$94,450 in mileage reimbursements, Ms. ██████████ would have had to drive over 176,000 work-related miles in her personal vehicle, which means she would have spent an average of 88 hours per week in her car on work related travel. Her stated salary of \$17,750 would equate to an hourly wage of approximately \$4 per hour, far below minimum wage. Obviously, something doesn't add up in Progressive's payroll records.

At the hearing, Mr. Mallett testified that only recently was he made aware that some of his employees may be receiving excess mileage reimbursement. He stated that if his employees did not turn in mileage reports, he would give them a 1099 at the end of the year. The 1099 report provided by Progressive listed no employees that were paid mileage during all of 2017 so apparently all of the employees that were paid excessive mileage in 2017 submitted mileage reports to Progressive. He stated that, as of a month and half ago, Progressive and Genesis are

⁴⁶ Progressive Exh. No. 21

⁴⁷ Id

⁴⁸ Id

⁴⁹ Id

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now testing tracking software to account for the mileage driven by his employees arising out of and in the course of their employment with Progressive.

Mr. Mallett used a Genesis employee, [REDACTED], as an example of how the new system is allegedly working and how the current data supports the nearly sixty thousand miles driven by [REDACTED] on an annual basis (\$31,910 equals the reimbursement of 59,645 miles at 53.5 cents per mile per IRS regulations). However, Mr. Mallett admitted that he is actually presently reimbursing [REDACTED] for the miles he drives to and from work each day which is not an allowable mileage reimbursement. In the end, Mr. Mallett had no explanation for the excessive mileage reimbursements to Ms. [REDACTED] or the other employees and admitted that the reimbursements to Ms. [REDACTED] were not proper.

In the past, Mallett Inc. paid its employees "per diems" and did not report these payments to LWCC as compensation on which premium would be owed. It was only through a post-policy audit that LWCC was able to uncover all wages, which had been improperly classified as per diems, and assess an accurate premium. Now, Progressive (and Genesis) are paying their employees excess mileage reimbursements which are not reflected as wages on the insurance application. The audit performed by LWCC suggests that 2017 wages were underreported to the prior carrier by more than 50% as Progressive paid more than half a million dollars in mileage reimbursements.

The excess per diem paid by Mallett, Inc. in the past and the excess mileage paid by Progressive and Genesis in 2017 demonstrates that Mr. Mallett's companies are either incapable of properly accounting for expenses claimed by its employees, to the tune of hundreds of thousands of dollars, or that its payroll records substantially understate the actual compensation

paid to its employees. In either event, LWCC cannot be expected to insure companies whose financial records make it impossible to accurately calculate premium owed.

Excessive Donations

The records provided by Progressive document that \$179,093.58 was paid during 2017 to its employees in the form of "donations."⁵⁰ This represents nearly twenty percent of the total payroll reported by Progressive on its application for insurance with LWCC. True donations are not included in the determination of wage benefits and therefore are excluded from the computation of workers' compensation premium. However, during the claims investigation for LWCC claim number 197374, [REDACTED] reported that the donations are actually production incentives. Production incentives should be reported as wages which would then be subject to taxes and would also be included in the determination of the workers' compensation premium that is owed by Progressive.⁵¹ Progressive's failure to accurately disclose amounts that are paid as wages makes the determination of a fair and accurate premium extremely difficult. Just as with the overpayment of mileage, the payment of these "donations" is another example of the inaccuracy of Progressive's payroll records, which leads to an inadequate premium for the risk that is insured by LWCC.

Travel Outside of Louisiana

Progressive's application stated that its employees did not travel out of state. However, during the investigation of a worker's compensation claim, Progressive's Operations Manager, [REDACTED] told LWCC investigators that Progressive employees do occasionally work out of state.⁵²

⁵⁰ Progressive Exh. No. 24

⁵¹ Progressive Exh. No. 25

⁵² Progressive Exh. No. 18

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Interchange of Labor

The application for insurance filed by Progressive on May 2, 2018 provides that there is no interchange of labor with any other business or subsidiary.⁵³ However, the documents provided by Progressive and Genesis show that thirty-nine employees worked for both companies⁵⁴. There is approximately \$600,000 in payroll divided between Progressive and Genesis for these employees.⁵⁵ The job tasks associated with a sober living facility such as Genesis are not transferable to the manufacturing and construction business of Progressive. The result is that employees of Progressive have their payroll classified under the less expensive class code associated with Genesis and the amount of premium collected is not accurate for either company.

The purpose of the question on the application is to enable the carrier to determine if the classifications listed on the application are accurate and to verify that the other employer also has workers' compensation coverage. When Progressive and Genesis indicate there is no interchange of labor, the responses do not raise additional questions by the carrier to ensure that the proper class codes are on the application or to verify coverage of the other employer. This failure to fully and accurately disclose the labor interchange leads to an inaccurate classification of payroll for premium determination and provides LWCC with cause to terminate the policy under La. R.S. 23:1409.

⁵³ Progressive Exh. No. 10

⁵⁴ Progressive Exh. No. 32

⁵⁵ Id

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Problems Revealed by the Audit of Genesis

Application Concerns

The first Genesis application, filed on April 13, 2018, states that the business is a sober living facility.⁵⁶ It also stated that clients at the facility were compensated for work and that the facility was a juvenile detention center, boot camp, or halfway house for convicts. LWCC's automated quoting system would not allow the application to be accepted because of those responses. LWCC Senior Underwriter, [REDACTED], sent [REDACTED] questions that required responses before a quote would be issued and the policy bound.⁵⁷ No responses were ever received to the questions posed by [REDACTED]. Instead, a new application was submitted on May 2, 2018, changing the answers to those questions to "no", which caused the automated system to issue a quote to Genesis.⁵⁸

The first application for Genesis on April 13, 2018 lists 10 full time and 5 part time employees who are all engaged in occupations fitting under the group home class code. The total payroll listed for the 15 employees is \$125,000 and the estimated premium is \$5,760.⁵⁹

The second Genesis application, filed on May 2, 2018, now lists 3 full time employees engaged in occupations fitting the group home class code and 8 full time employees engaged in occupations fitting the clerical class code. The total payroll listed for the 11 full time employees of Genesis remained at \$125,000 but due to the change in assigned class codes, the estimated premium has been dropped to \$2,504. On the application, the majority of the payroll is attributed to the 8 clerical employees which is the least expensive class code. If the figures on

⁵⁶ Genesis Exh. No. 7

⁵⁷ Genesis Exh. No. 8

⁵⁸ Genesis Exh. No. 9

⁵⁹ Genesis Exh. No. 7

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the application are to be believed, the full time clerical workers are paid less than \$5 per hour for their work.⁶⁰

Low Wages and High Number of Clerical Employees

In contrast to the figures provided on the applications filed with LWCC, the business records provided by Genesis for its audit list 73 employees and payroll of \$424,727.33 in 2017.⁶¹ Therefore, if the records and the application are all correct, from 2017 to 2018 Genesis allegedly shed 62 group home workers and nearly \$300,000 in payroll before it first sought workers' compensation coverage from LWCC first on April 13, 2018 and then again on May 2, 2018.

At the hearing, Mr. Mallett explained the discrepancy between Genesis' business records and the information on the applications by stating that in 2017, the employees working in Sanctuary Louisiana were actually insured under the policy because Sanctuary Louisiana didn't have any payroll in place. He further stated that once Sanctuary Louisiana became licensed by DHH and had its own policy of workers' compensation, all of the group home workers were moved under Sanctuary Louisiana.

However, LWCC issued a policy of workers' compensation insurance to Sanctuary Louisiana with an effective date of December 5, 2017, and the application for that policy contradicts Mr. Mallett's testimony. The application for this insurance was filed by Arthur J. Gallagher Risk Management Services on November 20, 2017. In that application, there are no employees listed under the Group Homes code. The total number of employees listed is 17 full time employees and they are all listed under the hospital: professional employees class code. The total payroll reported for these professionals is \$986,210. The policy remained in effect until it was cancelled on August 6, 2018. At no point in time was the policy ever amended to

⁶⁰ Genesis Exh. No. 9

⁶¹ Genesis Exh. No. 1, pps 2-5
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add additional employees or to add additional class codes in contrast to Mr. Mallett's testimony. Mr. Mallett's testimony regarding the discrepancy between the Genesis business records and the Genesis applications is without merit.

In light of the discrepancies between the first Genesis application, the second Genesis application and the Genesis business records provided for the audit, LWCC's position is that Genesis did not fully and accurately disclose its payroll and its operations. The discrepancies provide sufficient basis for the termination of LWCC policy number 166244 that had been issued to Genesis.

Mileage Reimbursements

Genesis employees were also paid mileage *in excess* of the amounts that they were paid in wages during 2017. The class codes for these employees were all listed as group home employees. None of the group home employees should have received mileage reimbursements that are greater than their wages. [REDACTED] a group home employee was paid \$16,690 in wages but he was paid nearly double that amount, \$31,910 in mileage reimbursement.⁶² [REDACTED]

[REDACTED] and [REDACTED] both clerical workers, received more in mileage reimbursement than they did in wages for all of 2017.⁶³ [REDACTED] received \$11,385 in wages and \$16,562 in mileage reimbursement.⁶⁴ [REDACTED] received wages of \$10,574 and mileage reimbursement of \$15,505.⁶⁵ The excessive mileage payments to these three workers results in \$64,000 in unreported wages for workers' compensation premium calculations.

As with the Progressive records, the Genesis records provided for audit demonstrate that employees of Genesis were paid excessive amounts of mileage reimbursement that do not

⁶² Genesis Exh. No. 11

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

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correspond with their class code or their job responsibilities. The total payroll reported by Genesis on the applications filed on April 13, 2018 and May 2, 2018 was \$125,000. It is LWCC's position that the mileage reimbursements are the new per diem with respect to unreported wages of Progressive and Genesis which ultimately leads to a deficient premium for the risk that is insured. Genesis did not fully and accurately disclose its payroll in the application for insurance filed on April 13, 2018 or on May 2, 2019 and therefore LWCC was correct in its decision to cancel the Genesis insurance policy as of August 6, 2018.

Conclusion

LWCC, pursuant to the rights expressly given to it by La. R. S. 23:1409, terminated the policies issued to Progressive and Genesis because those companies failed to fully and accurately disclose to LWCC the information needed by LWCC to accurately set the premiums for those companies. LWCC must be able to charge premiums that are an accurate reflection of the risk that it underwrites, both to protect LWCC and to protect the rate-making mechanism for workers compensation policies in the entire state. The applications submitted by Progressive and Genesis and their books and record make it impossible for LWCC to do that.

As demonstrated above, the applications submitted by Progressive and Genesis, as well as the books and records submitted in response to LWCC's audit request, are replete with inconsistencies, improbabilities and inaccuracies. Any effort by LWCC to calculate an appropriate premium for either company would be an exercise in futility and a risk that LWCC is not required to accept. Louisiana law, specifically La. R. S. 23:1409, provides LWCC the ability to deny or terminate coverage under circumstances such as this. LWCC has exercised that right in compliance with the requirements of Louisiana law and asks that the Commissioner affirm the termination of the policies issued to Progressive and Genesis.

By: Ronnie L. Johnson

Ronnie L. Johnson (BRN: 20238)

David R. Dugas (BRN: 05134)

McGlinchey Stafford PLLC

301 Main Street, 14th Floor

Baton Rouge, LA 70801

E-mail: rjohnson@mcglinchey.com

**Counsel for Louisiana Workers
Compensation Corporation**

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing discovery responses to be served upon all counsel of record in the above-captioned matter by mailing same by United States Mail, properly addressed and first-class postage prepaid, this 24th day of October, 2018.

Ronnie L. Johnson

Ronnie L. Johnson

IN THE MATTER OF PROGRESSIVE
BUILDINGS, LLC & GENESIS LIFE

DOCKET NO. 2018-01

VERSUS
INSURANCE

DEPARTMENT OF

LOUISIANA WORKERS' COMPENSATION
CORPORATION

STATE OF LOUISIANA

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared

Michael Stiltner

who, after being duly sworn, did depose and state as follows:

1. I am currently employed as the SV P/General Counsel for
Louisiana Workers' Compensation Corporation. As such, I have responsibility for Corporate Litigation

2. I have read the foregoing answers on behalf of LWCC in connection with the
above-referenced litigation and state that they are true and correct to the best of my knowledge
and belief.

3. Further Affiant sayeth not.

REP Stiltner
Michael Stiltner 10/24/18

Sworn to and Subscribed before me, Notary Public, this 24th day of October, 2018.

David B. Buffon
NOTARY PUBLIC

My commission expires

2/22/21



WORKERS COMPENSATION APPLICATION

DATE (MM/DD/YYYY)

11/20/2017

| | | | |
|---|--|--|---|
| AGENCY Arthur J Gallagher Risk Mgmt Services 470 Ashley Ridge Shreveport, LA, 71106-5910 | | COMPANY LWCC | UNDERWRITER Corinne Formeller phone: 225-930-0455 fax: 225-929-5624 |
| PHONE (A/C, No, Ext): 318-798-5550 FAX (A/C, No): 318-798-5507 E-MAIL ADDRESS: | | APPLICANT NAME SANCTUARY LOUISIANA, LLC phone: (337) 474-2640 | |
| Mailing Address (including ZIP +4) 3777 GERSTNER MEMORIAL BLVD LAKE CHARLES LA 70607-3235 | | E-MAIL ADDRESS | |
| YRS IN BUS 0 | | SIC | NAICS |
| CORPORATION <input checked="" type="checkbox"/> LLC | | INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> | |
| CREDIT BUREAU NAME: | | ID NUMBER: | |
| FEDERAL EMPLOYER ID NUMBER | | NCCID NUMBER | |
| FEIN - 72-1489189 | | OTHER RATING BUREAU ID OR STATE EMPLOYER REGISTRATION NUMBER | |

| | | | |
|--|---------------------------------------|--------------------------------------|---|
| STATUS OF SUBMISSION | | BILLING/AUDIT INFORMATION | |
| <input checked="" type="checkbox"/> QUOTE | <input type="checkbox"/> ISSUE POLICY | <input type="checkbox"/> AGENCY BILL | <input type="checkbox"/> PAYMENT PLAN |
| <input type="checkbox"/> BOUND (Give date and/or attach copy) ASSIGNED RISK (Attach) | | <input type="checkbox"/> DIRECT BILL | <input checked="" type="checkbox"/> OTHER Online Payroll |
| | | <input type="checkbox"/> ANNUAL | <input type="checkbox"/> SEMI-ANNUAL |
| | | <input type="checkbox"/> QUARTERLY | <input type="checkbox"/> % DOWN: |
| | | <input type="checkbox"/> AUDIT | <input type="checkbox"/> AT EXPIRATION |
| | | <input type="checkbox"/> SEMI-ANNUAL | <input type="checkbox"/> MONTHLY |
| | | <input type="checkbox"/> QUARTERLY | |

| LOCATIONS | |
|-----------|---------------------------------------|
| LOC # | STREET, CITY, COUNTY, STATE, ZIP CODE |
| 1 | 21089 FRONTAGE RD LACASSINE, LA 70650 |
| 2 | 702 E. MILLER IOWA, LA 70647 |

| POLICY INFORMATION | |
|--|---|
| PROPOSED EFF DATE 11-27-2017 | PROPOSED EXP DATE 11-27-2018 |
| NORMAL ANNIVERSARY RATING DATE | PARTICIPATING <input checked="" type="checkbox"/> NON-PARTICIPATING |
| PART 1 - WORKERS COMPENSATION (States) | RETRO PLAN |
| PART 2 - EMPLOYER'S LIABILITY | OTHER COVERAGES |
| \$ 1,000,000 EACH ACCIDENT | <input type="checkbox"/> U.S.L. & H |
| \$ 1,000,000 DISEASE-POLICY LIMIT | <input type="checkbox"/> OUTER CONTINENTAL SHELF |
| \$ 1,000,000 DISEASE-EACH EMPLOYEE | <input type="checkbox"/> ALTERNATE EMPLOYER |
| DIVIDEND PLAN/SAFETY GROUP | <input type="checkbox"/> SPECIFIC WAIVER SUB |
| ADDITIONAL COMPANY INFORMATION | <input type="checkbox"/> BLANKET WAIVER SUB |
| | <input type="checkbox"/> MARITIME COVERAGE |

| RATING INFORMATION | | | | | | | | | |
|---|--------|------------------|--------------------------|-------------------------------------|--------------|------------------|-------------------------------|------|--------------------------|
| STATE | LOC # | CLASS CODE | DESCR CODE | CATEGORIES, DUTIES, CLASSIFICATIONS | # EMPLOYEES | | ESTIMATED ANNUAL REMUNERATION | RATE | ESTIMATED ANNUAL PREMIUM |
| LA | | 8833 | | Hospital: Professional Employees | FULL TIME 17 | PART TIME 0 | 986,210 | | |
| LA | | 9040 | | Hospitals All Other Employees | 0 | 0 | 0 | | |
| | | | | | | | | | |
| | | | | | | | | | |
| SPECIFY ADDITIONAL COVERAGES / ENDORSEMENTS | | | | | | | | | |
| STATE: | FACTOR | FACTORED PREMIUM | | | FACTOR | FACTORED PREMIUM | | | |
| TOTAL | | \$ | EXPENSE CONSTANT | | N/A | \$ 150.00 | | | |
| INCREASED LIMITS | | \$ | TAXES / ASSESSMENTS | | N/A | \$ | | | |
| DEDUCTIBLE | | \$ | | | | \$ | | | |
| | | \$ | ESTIMATED ANNUAL PREMIUM | | N/A | \$ | | | |
| EXPERIENCE OR MERIT MODIFICATION | | \$ | | | | | | | |
| LOSS CONSTANT | N/A | \$ | | | | | | | |
| ASSIGNED RISK SURCHARGE | | \$ | | | | | | | |
| ARAP | | \$ | | | | | | | |
| | | \$ | | | | | | | |
| SCHEDULE RATING | | \$ | | | | | | | |
| CCPAP | | \$ | TOTAL EST ANNUAL PREMIUM | | N/A | \$ 19,747.00 | | | |
| STANDARD PREMIUM | | \$ | MINIMUM PREMIUM | | | \$ 2,054.00 | | | |
| PREMIUM DISCOUNT | | \$ | DEPOSIT PREMIUM | | | \$ | | | |

INDIVIDUALS INCLUDED/EXCLUDED

| PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED. (Remuneration to be included must be part of rating information section.) | | | | | | | | | |
|---|-------|-------------------|---------------|------------------------|------------------|----------------------------|---------|------------|--------------|
| STATE | LOC # | NAME | DATE OF BIRTH | TITLE/ RELATIONSHIP | OWNER- SHIP % | DUTIES | INC/EXC | CLASS CODE | REMUNERATION |
| LA | 1 | MARK BONIOL | 07/28/1957 | Other | 50 | Executive/ Managing Member | Exc | 9040 | 135,000 |
| LA | 2 | CHESTER MALLET | 09/17/1956 | Other | 50 | Executive/Member | Exc | 9040 | 135,000 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

PRIOR CARRIER INFORMATION/LOSS HISTORY

| PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS | | | | | | | LOSS RUN ATTACHED |
|---|-------------------------|--|----------------|-----|----------|-------------|-------------------|
| YEAR | CARRIER & POLICY NUMBER | | ANNUAL PREMIUM | MOD | # CLAIMS | AMOUNT PAID | RESERVE |
| | CO: | | | | | | |
| | POL #: | | | | | | |
| | CO: | | | | | | |
| | POL #: | | | | | | |
| | CO: | | | | | | |
| | POL #: | | | | | | |
| | CO: | | | | | | |
| | POL #: | | | | | | |
| | CO: | | | | | | |
| | POL #: | | | | | | |

NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS

GIVE COMMENTS AND DESCRIPTIONS OF BUSINESS, OPERATIONS AND PRODUCTS: MANUFACTURING-- RAW MATERIALS, PROCESSES, PRODUCT, EQUIPMENT, CONTRACTOR-- TYPE OF WORK, SUB-CONTRACTS, MERCANTILE--MERCHANDISE, CUSTOMERS, DELIVERIES, SERVICE--TYPE, LOCATION, FARM--ACREAGE, ANIMALS, MACHINERY, SUB-CONTRACTS.
 Substance Abuse Treatment Facility - New Venture - Inpatient and Outpatient

GENERAL INFORMATION

| EXPLAIN ALL "YES" RESPONSES | YES | NO | EXPLAIN ALL "YES" RESPONSES | YES | NO |
|--|-----|------|--|-----------------------|--------------------------|
| 1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT/WATERCRAFT? | | X | 18. ANY PRIOR COVERAGE DECLINED/ CANCELLED/NON-RENEWED (Last 3 years)? | | X |
| 2. DO/HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. landfills, wastes, fuel tanks, etc) | | X | 19. ARE EMPLOYEE HEALTH PLANS PROVIDED? | | X |
| 3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET? | | X | 20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY? | | X |
| 4. ANY WORK PERFORMED ON BARGES, VESSELS, DOCKS, BRIDGE OVER WATER? | | X | 21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS? | | X |
| 5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS? | X | | 22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME? | | X |
| 6. ARE SUB-CONTRACTORS USED? (IF YES, GIVE % OF WORK SUBCONTRACTED) | X | | 23. ANY TAX LIENS OR BANKRUPTCY WITHIN THE LAST 5 YEARS? | | X |
| 7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INS.? | | X | 24. ANY UNDISPUTED AND UNPAID WORKERS COMPENSATION PREMIUM DUE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? IF YES, EXPLAIN INCLUDING ENTITY NAME(S) AND POLICY NUMBER(S). | | X |
| 8. IS A WRITTEN SAFETY PROGRAM IN OPERATION? | X | | CONTACT INFORMATION | | |
| 9. ANY GROUP TRANSPORTATION PROVIDED? | | X | IN- SPECTION | PHONE: (337) 480-4423 | FAX: |
| 10. ANY EMPLOYEES UNDER 18 OR OVER 60 YEARS OF AGE? | | X | | NAME: Andrea Beaugh | |
| 11. ANY SEASONAL EMPLOYEES? | | X | | E-MAIL: | |
| 12. IS THERE ANY VOLUNTEER OR DONATED LABOR? | | X | ACCTNG RECORD | PHONE: (337) 480-4423 | FAX: |
| 13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS? | | X | | NAME: Andrea Beaugh | |
| 14. DO EMPLOYEES TRAVEL OUT OF STATE? | | X | | E-MAIL: | |
| 15. ARE ATHLETIC TEAMS SPONSORED? | | X | CLAIMS INFO | PHONE: (337) 480-4423 | FAX: |
| 16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE? | | X | | NAME: Andrea Beaugh | |
| 17. ANY OTHER INSURANCE WITH THIS INSURER? | | X | | E-MAIL: | |
| <p>APPLICABLE IN TENNESSEE: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO ANY PARTY TO A WORKERS COMPENSATION TRANSACTION FOR THE PURPOSE OF COMMITTING FRAUD. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS. ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND [NY: SUBSTANTIAL] CIVIL PENALTIES. (Not applicable in CO, HI, NE, OH, OK, OR, TN or VT; in DC, LA, ME and VA, insurance benefits may also be denied)</p> | | | | | |
| REMARKS (Attach additional sheets if more space is required) | | | | | |
| APPLICANT'S SIGNATURE | | DATE | PRODUCER'S SIGNATURE | | NATIONAL PRODUCER NUMBER |



Workers' Compensation & Employers' Liability Insurance Policy Non-Election Notice

This form must be signed by each individual seeking to be excluded under the policy.

Named Insured: SANCTUARY LOUISIANA, LLC

Policy Number (if policy has been issued): 6531055

In accordance with Louisiana Revised Statutes, Title 23, Section 1035, I (we) hereby elect to exclude myself (ourselves) from coverage under the captioned policy and not be subject to the provisions of the Louisiana Workers' Compensation Act while employed with the above named insured.

Effective immediately, this form applies to policies written through LWCC unless rescinded in writing by the executive officer, partner or sole proprietor. It must be signed by each individual seeking to be excluded under the policy.

I attest that:

- * I am a bona fide president, vice president, secretary, or treasurer of SANCTUARY LOUISIANA, LLC
(named insured corporation) who owns not less than ten percent of the stock therein, or
- * I am a partner in and employed by SANCTUARY LOUISIANA, LLC
(named insured partnership), or
- * I am a sole proprietor in the above named insured business, or
- * I am a member of SANCTUARY LOUISIANA, LLC
(named insured LLC) who owns not less than 10 percent of the LLC.

By signing below, I agree this election shall apply but is not limited to all trades, businesses, or occupations conducted by the insured's corporations, partnerships, sole proprietorships or limited liability company (LLC).

| | | |
|--|----------------|------------|
| <u>Other</u> | | |
| Signature of Partner/Officer/Sole Proprietor/Member | Title | |
| <u>MARK BONIOL</u> | <u>50</u> | <u>/ /</u> |
| Print Name of Partner/Officer/Sole Proprietor/Member | % of Ownership | Date |
| <u>Other</u> | | |
| Signature of Partner/Officer/Sole Proprietor/Member | Title | |
| <u>CHESTER MALLETT</u> | <u>50</u> | <u>/ /</u> |
| Print Name of Partner/Officer/Sole Proprietor/Member | % of Ownership | Date |
| <u>Other</u> | | |
| Signature of Partner/Officer/Sole Proprietor/Member | Title | |
| | | <u>/ /</u> |
| Print Name of Partner/Officer/Sole Proprietor/Member | % of Ownership | Date |
| <u>Other</u> | | |
| Signature of Partner/Officer/Sole Proprietor/Member | Title | |
| | | <u>/ /</u> |
| Print Name of Partner/Officer/Sole Proprietor/Member | % of Ownership | Date |

Name and Address

SANCTUARY LOUISIANA, LLC
3777 GERSTNER MEMORIAL BLVD
LAKE CHARLES, LA 70607-3235

Additional Information

PowerComp ID : 6531055

Doing Business As :
Phone : (337) 474-2640
Fax :

ADDITIONAL RATING INFORMATION :

Rating Tier : Basic Rating Program
Experience Mod : 11/27/2017

INDIVIDUALS INCLUDED/EXCLUDED CLASS CODES DESCRIPTION:

NAME : MARK BONIOL
SSN :

NAME : CHESTER MALLETT
SSN :

ADDITIONAL GENERAL INFORMATION :

*Additional Information
--Is the policyholder located at a permanent Louisiana location? :: YES
--Any Prior Carriers? :: NO
*Additional Coverages
--Any "Yes" responses to coverage questions below will result in underwriter referral. ::
--U.S.L & H. Coverage :: NO
--Retro Plan :: NO
--Deductible :: NO
--Voluntary Comp :: NO
--Foreign Coverage :: NO
--Outer Continental Shelf :: NO
--Alternate Employer :: NO
--Specific Waiver of Subrogation :: NO
--Blanket Waiver of Subrogation :: NO
--Maritime Coverage :: NO

ACORD QUESTIONS :

*Workers Compensation Questions
--Does applicant own, operate or lease aircraft/watercraft? :: NO
--Do/have past, present, or discontinued operations involve(d) storing, treating, discharging, applying, disposing, or transporting of hazardous materials? :: NO
--Any work performed underground or above 15 feet? :: NO
--Any work performed on barges, vessels, docks and bridge over water? :: NO
--Is the applicant engaged in any other type of business? :: YES
--Please Explain :: Members of the LLC also have other business, but not related or total same ownership.
--Is ownership the same or similar to the applicant? :: No
--Is the business insured? :: Yes
--Are sub-contractors used? :: YES
--Please give % of work subcontracted. :: 20
--What duties are performed by subcontractors? :: Doctors are 1099 and have separate insurance. Food preparation and transportation is also subbed to insured subs.
--Make certain that all certificates of insurance are issued from a carrier that is licensed to do business in Louisiana. This list is available on the DOI website. ::
--Any work sublet without certificates of insurance? :: NO
--Is a written safety program in operation? :: YES
--Please Explain and if available, please provide a copy. :: Standard medical safety procedures followed.
--Any group transportation provided? :: NO
--Any employees under 16 or over 60 years of age? :: NO
--Any seasonal employees? :: NO
--Is there any volunteer or donated labor? :: NO
--Any employees with physical handicaps? :: NO
--Do any employees travel out of state? :: NO

Name and Address

SANCTUARY LOUISIANA, LLC
3777 GERSTNER MEMORIAL BLVD
LAKE CHARLES, LA 70607-3235

Additional Information

--Are athletic teams sponsored? :: NO
--Are physicals required after offers of employment are made? :: NO
--Any other insurance with this Insurer? :: NO
--Any other coverage declined/cancelled/non-renewed (last 3 years)? :: NO
--Are employees health plans provided? :: NO
--Is there a labor interchange with any other business/subsidiary? :: NO
--Do you lease employees to or from other employers? :: NO
--Do any employees predominantly work from home? :: NO
--Any tax liens or bankruptcy within the last 5 years? :: NO
--Any undisputed and unpaid workers compensation premium due from you or any commonly managed or owned enterprises? :: NO
*Commercial Insurance Questions
--Do you have a written drug policy? :: NO
--Do you have a return to work program? :: NO
--Do you have a procedure to obtain a Second Injury Questionnaire? :: NO
*Additional Questions
--Does the applicant provide temporary labor, contract labor or leased labor? :: NO
--Are any of the applicants employees, subcontractors or independent contractors paid in cash? :: NO
--Is the insured a PEO company/client of a PEO Company? :: NO
--Is the applicant part of a Work Release program or does the applicant use prison labor? :: NO
--Does the applicant have operations in another state? :: NO
*Remarks
--Please explain any yes answers to the above questions in the space below: ::

CLASS CODE QUESTIONNAIRE :

*Manual Questions

--Does the applicant only provide outpatient services? :: NO
--Does the applicant also have a convalescent or nursing home facility that is not located on the hospital premises? :: No

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Insurer: LOUISIANA WORKERS' COMPENSATION CORPORATION
 2237 S. ACADIAN THRUWAY
 BATON ROUGE, LA 70808
 Carrier Id: 30120
 A Mutual Company

INFORMATION PAGE
 FOR POLICY NUMBER – 164324-B
Accepted Risk Program

1. Policyholder:

SANCTUARY LOUISIANA LLC
 3777 GERSTNER MEMORIAL BLVD
 Lake Charles, LA 706073235

Agency:

10193
 ARTHUR J GALLAGHER RISK MGMT SERVICES
 470 Ashley Ridge
 Shreveport, LA 71106

Federal ID: 721489189
 Entity Type: Cooperative
 NCCI Risk Identification Number:

2. Policy Period:

Effective: 12:01 AM 12/05/2017

Expires: 12:01 AM 12/05/2018

3. Coverage, Limits and Endorsements:

- A. Workers' Compensation Insurance: Part One of the policy applies only to the Workers' Compensation Law of the state of Louisiana.
- B. Employers Liability Insurance: Part Two of this policy applies to work in the state of Louisiana. The limits of our liability under Part Two are:

| | | |
|---------------------------|-------------|---------------|
| Bodily Injury by Accident | \$1,000,000 | each accident |
| Bodily Injury by Disease | \$1,000,000 | policy limit |
| Bodily Injury by Disease | \$1,000,000 | each employee |

- C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here: NONE

- D. This policy includes these endorsements and schedules:

| | |
|----------------|---|
| WC 00 00 01B | Policy Information Page |
| WC 00 00 00C | Workers Compensation and Employers Liability Insurance Policy |
| LWCC 1B | Monthly Reporting Endorsement |
| LWCC 4 | General Endorsement |
| LWCC 13A | Limited Other States Endorsement |
| LWCC 35 change | Additional Location Endrs - Change |
| LWCC 38B | Premium Obligations Endorsement |
| WC 00 03 08 | Partners, Officers, and Others Exclusion Endorsement |
| WC 00 04 14 | Notification of Change in Ownership Endorsement |
| WC 00 04 21D | Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement |
| WC 00 04 22B | Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement |
| WC 17 06 01H | Louisiana Amendatory Endorsement |
| LWCC 9091 | Standard Notice of Compliance |

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**4. Classifications:**

The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Premium Period: 12/05/2017 to 12/05/2018

| Classification | Code No. | Premium Basis Total Estimated Annual Remuneration | Rate per \$100 of Remuneration | Estimated Annual Premium |
|----------------------------------|-----------------|--|---------------------------------------|---------------------------------|
| Hospital: Professional Employees | 8833 | \$986,210.00 | 2.57 | \$25,346.00 |
| Hospitals All Other Employees | 9040 | \$.00 | 11.30 | \$.00 |
| Subtotals: | | \$986,210.00 | | \$25,346.00 |
| Class Premium Total: | | | | \$25,346.00 |

| Premium Adjustment Type | Premium Adjustment Factor | Premium Adjustment Amount |
|--|----------------------------------|----------------------------------|
| Employers Liability Limits (State): 1M/1M/1M | 0.014 | \$355.00 |
| Schedule Rating Factor | 1.00 | \$.00 |
| Expense Constant | | \$150.00 |
| Foreign Terrorism | 0.02 | \$197.00 |
| Total Estimated Annual Premium: | | \$26,048.00 |

Minimum Premium \$2,054.00 Deposit Amount \$6,512.00

Payment Option: Monthly Reporting

Countersigned By: _____